App. F. IX-4

1932. 33 (Law)

File No. 20-32

Serial Nos. 1-4

Previous References
Law 88-30-4-5
" 88-30-1-3
Pl- 85-30-5,6,8-12

Later References

preserve

14

PRESERVED

General and Revenue Secretariat.

Serial Nos 1 to 4

Part B for Nov 32

SUBJECT.

Re. ownership of Carcases of two tigers killed near Kodeva village, Dandeli Taluk

4) 2

The Ch. Conservator of Fs

No. P1774 of 23-9-32

forwards a copy of the Govt. Advocate's opinion in the matter

Dr. Abdul Aziz
3.11.32

GENERAL AND REVENUE SECRETARIAT.

(Law)

NOTES.

File No. 20-32

FILE HEADING.

Shooting of two tigers near Udem village, Tariker taluka

FROM

The Chief Conservator of forests

No. D1-11-118/32 Dated 27th July 1932 Received 29.7.32

Diary No. 660 | Enclos. | Spare copies | Serial No. 1

BRIEF ABSTRACT OF LETTER

Forwards Copy of the letter received from the Shimoga Conservator of forests re: the shooting of two tigers near Udem village, Tarikere Taluk and solicits legal opinion whether the department can proceed to receive the skin of the animal

NOTES AND ORDERS.

1) The connected reference relating to the Bisur Tiger skin case are put up.

2) The two official records being the enclosures to the Shimoga Conservator's letter said to have been forwarded - are not received. In order to have a clear idea of the circumstances under which the animal was killed it is perhaps necessary to call for the records. The question of determination of the ownership to the skins may be taken up for the receipt of these records. Dfr put up for orders

3) [illegible]

Notes—First Sheet

TYPING SECTION 4 AUG. 1932

WD 69—GBPM—5,000—14-7-31

File No. of 193 | General and Revenue Secretariat.

To,

4) G. M. Br. for favour of perusing up the Ch. Conservators letter dated 26.1.32 referred to in para 1 of the P.W.D.

Urgent

ISD 8/6.

MC 5/8

Solid

5) Requisition may kindly be made — Journal Records for the period 8/5 to 30/8/32 5, 6, 8—12 B. July 1932 (Letter No. D1-11-118-32 dt 8-8-32 from the C.F. is put into proper file) (Typed).

(M 8-5-30

(X) L. No. 674.

MK 12/8 Law Secy.)

From,

The C.C.F.

No. D1-11-118-32 dated 8th August 1932 forwarding the offence records referred to by the Conservator of Forests.

6) It is stated that 2 tigers were killed near Udesm Village, Tarikere Taluk for protection of Cattle Stock. The question of ownership to the Tiger Skin, whereas tiger killed in a private land is a subject for Consideration. No doubt this question is already decided by the H.C. in the Bonu Tiger Skin Case. According to the Case law cited in the Judgment of the above case, since the tigers are killed on the private land the Carcass should belong to the owner of that land.

7) The Ch. Conservator of Forests in his letter dated 26th Jan 1932, had suggested certain

Serial No.

Suitable additions to Rule 4 of the revised game laws in which the provision was made for the surrender of the tail skins to the Govt. where the tiger was killed in self defence or for protection of live stock or human lives. But it was thought unnecessary to make any more additions to rule 4. No doubt the reasons given in para 3 of the Conservator's letter to claim the ownership to Govt. seem to be convincing. But in the absence of the express provision of law it is rather difficult to enforce the claim.

Subs for order.

TSD 19/8

~~Whether under the present Regulation or the Game Regulation~~ ... under the present Regulation ~~the~~ ~~Game~~ ~~Regulation~~ ... under ~~the~~ present Regulation ~~the~~ ~~Game~~ ~~Regulation~~ ~~make the skin of the tiger killed without~~ ~~license~~

8) The Common law as to the property in wild animals is as stated in the Mysore High Ct decision in Mr. Ramarao's case, namely that it usually belongs to the person who kills the animal or reduces it to his possession, except in cases when he so kills on the property of another, in which case it is the owner of the property that has a better ~~superior~~ right to the carcass than the killer.

NOTE—Contn. Sheet.

4

File No. of 193 .

General and Revenue Secretariat

The definition of a forest produce given in Sec 2 cl(5)(b)(iii) of the Ft Regulation is in accordance with this principle, since it makes the wild animals & their skins forest produce, only if they were found in or brought from a forest, since a forest is always the property of Govt

9 There is nothing in the Game Regulation II of 1901 or the rules framed thereunder which can be said to make a departure from the Common law principle stated above. There is however provision in sec 9 of Regulation II of 1901 whereby, when any offence is committed in the killing of game under the Regulation, the Convicting Court or magistrate is enabled to confiscate the animal killed or any portion of it, e.g., the skin.

10 The argument of the Conservator in para 3 of his letter of 12th July 1932 appears hardly convincing. The skin is not claimed in pursuance of any right of private defence but by virtue of a common law right, as it were. If the killing of the tiger was for self defence or for protection of property, it cannot be a forbidden act, under the law. Even in cases in which the killing is unauthorised, but on private lands, Govt can get a right

755
660

General and Revenue Secretariat | File No. | of 193 .

Serial No.

to the skin only by an order of the Magistrate under sec 9 of Regn II of 1901 and not otherwise.

11 In this view the H: Dept cannot proceed to recover the skins of the two tigers shot near Indeva village referred to in the P.O.2

12 Since the Conservator requests for the opinion of the G.A. in the matter, the file will be sent to him for the purpose if appr>

Gen Secy) 27.8.32

G.O.No.P 150 of 31 dt 29th August 1932

13 Forwarded with compliments to the Govt Advocate for favour of opinion.

R.O.

Impossible
For Gen Secy to Govt
29.8.32

GENERAL SECRETARY 29 AUG 1932 No

GOVT. ADVOCATE'S OFFICE 30 AUG 1932 BANGALORE

Memo 221/32-33 dt 29.8.32

Returned with compliments.

14 The points for consideration in this case are covered by the decision in Mr. Birur Rama Rao's case reported in 10 Mysore Law Journal 110. I agree with the opinion of the Assistant Secretary that the skin of the tiger which was shot dead on a private land should, according to the above decision, belong to the owner of that land. The contention raised by the Conservator is not tenable.

G.O. No 26/32-33 dt 20.9.32

GENERAL SECRETARIAT 20 SEP 1932 No Law

15 As, according to the Conservator's letter dated the 12th July 1932, the other tiger was shot dead

NOTE—Contn. Sheet.

6

958

File No. | of 193 | General and Revenue Secretariat

dead in the District Forest, I take it that the dead animal was also found there. Its skin must, in the light of the High Court decision, belong to Government.

Government Advocate.
19-9-1932.

H.

Dft. reply accordingly

Dft
ISD 21/9

Issue
21.9

To.

The C. C. T.

no. 1772 d 23.9.32 enclosing a Copy of Govt. Ad's opinion on the matter

To,

G. M. Br. (71) for perusal return

ISD 24/9

For perusal

24/9

(Genl Secy) 29/9/32

TYPING SECTION
21 SEP. 1932
GENL & REV SECT

GENERAL SECRETARIAT
30 SEP. 1932
No.

May be rejd.

31/10/32

(Protection Branch with compliments)

31.X.32

31/10

ISD 1/11/32

1502/32

MYSORE FOREST DEPARTMENT.

IN REPLY REFER TO
No. D.1-11-118/32
ENCLO. One

TEL. ADDRESS
"CHIEFCON."

OFFICE OF THE CHIEF CONSERVATOR OF FORESTS
IN MYSORE,
Bangalore, 25th July *1932.*

29.
Law 20-32-1

FROM

B. V. RAMIENGAR, ESQ., B.A.,
Chief Conservator of Forests
in Mysore, Bangalore.

GENERAL SECRETARY
29 JULY 1932
No

To

R.Ranga Rao, Esq., B.A., B.L.,
Secretary to the Government
of H. H. the Maharaja of Mysore,
General Department, *Bangalore.*

11 Augt
R3 7/32
29

Sir,

XY Letter refer relating to the Birur Tiger skin case
MVJ 29

I have the honour to forward herewith for the information and orders of Government copy of Shimoga Conservator's letter No.I.137-1791/31 dated the 12th instant together with the two official records referred to therein in connection with the shooting of two tigers near Udevu village in Tarikere Taluk and to state that the copy of the judgment in the Birur Tiger Skin case referred to by the Conservator has been sent to you with my letter No.D.1-187-1234/30 dated the 28th January 1932. There is force in what the Conservator states and I am of opinion that as tigers are declared as game their skins wherever they may be found belong to Government when shot by any other than game license holders. In this connection I beg to invite attention to my letter No.D.1-118-1209/31 dated 26-1-32.

I therefore request you to obtain legal opinion as to whether the Department can proceed to obtain recovery of the skin.

I have the honour to be,
Sir,
Your most obedient servant,

B V Ramiengar

Chief Conservator of Forests.

Copy of letter No.I.137-1791/31-32 dated the 12th July 1932, from the Conservator of Forests, Shimoga, to the Chief Conservator of Forests in Mysore, Bangalore.

****

Re. Shooting of two tigers near Udevu Village, Tarikere Taluk.

In forwarding herewith the offence records received with the Bhadravati District Forest Officer's letter No.2283 dated the 27th ultimo, I have the honour to state as follows:-

1) As the shooting has been reported to have been done for the protection of cattle, no further legal action is considered advisable at this distance of time.

2) Regarding the disposal of the skins, there is some difficulty in arriving at a conclusion. The skin of the tiger which was shot dead in the District Forest belongs to Government as per the decision of the High Court in Government Versus Rama Rao (Birur Tiger Skin Case) received with your Memo No.D.1-187-1234/30 dated 28-1-1932.

3) Though, as per the above decision the skin of the tiger which was shot dead on a private land should belong to the owner of the land I think it ought to belong to Government for the following reasons.

a) Tiger has been declared a game and nobody can shoot it except in self defence or defence of property even on a private land.

b) The right of private defence extends only up to the shooting of the tiger and no further. There can be no claim for the skin and the party having done a forbidden act, has to report the fact to the authorities concerned to take charge of the skin etc.

c) Regarding the application of the general case laws, I am of opinion that they cannot be applied when there are special laws such as Game Regulation etc., on the subject.

Since this aspect of the question has not been considered, I request you to kindly obtain and communicate the opinion of the Government Advocate in the matter.

****

Chief Conservator of Forests.

Copy of letter No.I.137-1791/31-32 dated the 12th July 1932, from the Conservator of Forests, Shimoga, to the Chief Conservator of Forests in Mysore, Bangalore.

****

Re. Shooting of two tigers near Udevu Village, Tarikere Taluk.

In forwarding herewith the offence records received with the Bhadravati District Forest Officer's letter No.2283 dated the 27th ultimo, I have the honour to state as follows:-

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2) Regarding the disposal of the skins, there is some difficulty in arriving at a conclusion. The skin of the tiger which was shot dead in the District Forest belongs to Government as per the decision of the High Court in Government Versus Rama Rao (Birur Tiger Skin Case) received with your Memo No.D.1-187-1234/30 dated 28-1-1932.

3) Though, as per the above decision the skin of the tiger which was shot dead on a private land should belong to the owner of the land I think it ought to belong to Government for the following reasons.

a) Tiger has been declared a game and nobody can shoot it except in self defence or defence of property even on a private land.

b) The right of private defence extends only up to the shooting of the tiger and no further. There can be no claim for the skin and the party having done a forbidden act, has to report the fact to the authorities concerned to take charge of the skin etc.

c) Regarding the application of the general case laws, I am of opinion that they cannot be applied when there are special laws such as Game Regulation etc., on the subject.

Since this aspect of the question has not been considered, I request you to kindly obtain and communicate the opinion of the Government Advocate in the matter.

****

Chief Conservator of Forests.

Appendix F G—1]

SUBJECT .....

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Section Law

File No. 20-32

Serial No. 2

Diary No. of letter replied to .....

No P791.

To The Chief Conservator offices

Sir

General and Revenue Secretariat

( )

the *193* .

Date of issue 4-8-32.

Signed by Mr N.A.G

With reference to your letter no. D.1-4-118/32 dated 29th July 1932 soliciting legal opinion in the matter of recovery of the skin of the two tigers which were killed near Udem village Sattari Taluka. I am directed to request that the two forest records forming the enclosure to the Shimoga Conservators letter no. 1-137-1791/31 dated 17th Aug. which are said to have been sent have not been received. and to request that the same may kindly be sent for reference at once for early

List of enclosures .....

Copied by .....

Examined by .....

I have etc

WD 71—GPBM—40,000—20-7-31.

Mr 4/8 for Govt Secy

958 934
p 834

MYSORE FOREST DEPARTMENT.

IN REPLY REFER TO
No. 1..11.-118.-32
ENCLO.....

TEL. ADDRESS :
"CHIEFCON."

OFFICE OF THE CHIEF CONSERVATOR OF FORESTS
IN MYSORE,

Bangalore,.....6th.....August..... ...1932

Law 20-32-3

FROM

B. V. RAMIENGAR, ESQ., B.A.,
Chief Conservator of Forests
in Mysore, Bangalore.

GENERAL SECRETARY
8 AUG. 1932
No.

To

R.Ranga Rao, Esqr., B.A., B.L.,
Secretary to the Government
of H. H. the Maharaja of Mysore,
General Department, *Bangalore.*

Sir,

With reference to your letter No.P.791/Law.20-32-2 dated the 4th instant intimating that the two offence records referred to by the Conservator of Forests, Shimoga, and stated to have been sent to you with my letter of even number dated 27-7-1932, have not been received, I have the honour to forward the same herewith.

I have the honour to be,

Sir,

Your most obedient servant,

B. V. Ramiengar

Chief Conservator of Forests.

Mnr.

5

Appendix F G—17

SUBJECT .....

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.....

Section Law

File No. 20-32

Serial No. 4

Diary No. of letter replied to .....

No P. 1774/Eis 2 copies of note of opinion & 1 file

To The Chief Conservator of Fo

Sir,-

General and Revenue Secretariat

( )

the *193*

With reference to the correspondence ending with your letter no. DL II - 118-32 dated 8th Aug 1932 soliciting legal opinion re the ownership of Cadans of the tigers killed near Udara village Taikad Taluk I am directed to enclose herewith Copy of the Govt Advocate's opinion in the matter

Date of issue 23/9/32

Signed by Jm M.J. Rao

The G/A's opinion refers in its turn to my note of 27-8-32. The same, i.e. paras 8, 9 & 10 may also be got typed as an appendix to G/A's opinion — MP

List of enclosures MP

The enclosures to your letter are herewith returned

I have etc

Copied by W.V with other papers 21/9

ISD 21/9

MP 21.9 for Gen Secy

Examined by .....

Rep.1774/Ex

22nd September 1932
23

The

The Chief Conservator of Forests in Mysore,

Bangalore.

With reference to the correspondence ending with your letter No.D.1.11-118/32 dated 8th August 1932 soliciting legal opinion re: the ownership of carcasses of the tigers killed near Udevu village, Tarikere Taluk, I am directed to enclose herewith a copy of the Government Advocate's opinion in the matter.

The enclosures to your letter are herewith returned.

I have the honour to be,

Sir,

Your most obedient servant,

For General Secretary to Government.

ISD

mk.

U.O.No.26/32-33 dated 20th September 1932 from the Government Advocate

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The points for consideration in this case are covered by the decision in Mr. Bit Birur Rama Rao's case reported in 10 Mysore Law Journal 110. I agree with the opinion of the Assistant Secretary that the skin of the tiger which was shot dead on a private land should, according to the above decision, belong to the owner of that land. The contention raised by the Conservator is not tenable.

As, according to the Conservator's letter dated the 12th July 1932, the other tiger was shot dead in the District -- Forest, I take it that the dead animal was also found there. Its skin must, in the light of the High Court decision, belong to Government.

" C O P Y "

For General Secretary to Government.

mk.

8

Assistant Secretary's note dated 27th August 1932.

The common law as to the property in wild animals is as -- stated in the Mysore High Court decision in Mr.Rama Rao's case, namely that it usually belongs to the person who kills the animal or reduces it to his possession, except in cases when he so kills on the property of another, in which case it is the owner of the property that has a better right to the carcass than the killer.

The definition of a Forest produce given in Section 2 Clause (5) (b) (iii) of the Forest Regulation is in accordance with this principle, since it makes the wild animals and their skins forest produce, only if they were found in or brought from a forest, since a forest is always the property of Government.

There is nothing in the Game Regulation II of 1901 or the rules framed thereunder which can be said to make a departure from the common law principle stated above. There is however provision in Section 9 of Regulation II of 1901 whereby when any offence is committed in the killing of game under the Regulation, the convicting Court or magistrate is enabled to confiscate the animal killed or any portion of it, e.g., the skin.

The argument of the Conservator in para 3 of his letter of 12th July 1932 appears hardly convincing. The skin is not claimed in pursuance of any right of private defence but by virtue of a common law right, as it were. If the killing of the tiger was for self defence or for protection of property it cannot be a forbidden act, under the law. Even in cases in which the killing is unauthorised, but on private land, Government can get a right to the skin only by an orders of the Magistrate under section 9 of Regulation II of 1901 and not otherwise.

" C O P Y "

MK.

For General Secretary

ISD